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NO. _____

IN THE
UNITED STATES SUPREME COURT

SANDY EDMONDS, APPEARING AS TUTRIX OF HER MINOR SON CHRISTOPHER BELL

PETITIONER,

VERSUS

THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS; AND HOWARD RANDALL

RESPONDENTS,

On Petition for a Writ of Certiorari to Louisiana State Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER CERTIORARI SHOULD BE GRANTED TO DETERMINE WHETHER THE HIGHEST COURT OF LOUISIANA HAS ALLOWED THE DEFINITION OF "OFFENDER" FOR THE PURPOSE OF THE EXHAUSTION OF THE ADMINISTRATIVE REMEDY TO BE EXPANDED ERRONEOULY AND TO THE DETRIMENT OF MINORS TO INCLUDE A MINOR'S MOTHER AS HIS NATURAL TUTRIX WHO FILED SUIT FOR DAMAGES HE SUSTAINED WHILE IN THE CUSTODY OF THE STATE OF LOUISIANA, REQUIRING THE TUTRIX TO COMPLY WITH THE CORRECTIONS ADMISTRATIVE RELIEF REMEDY

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THE HIGHEST COURT OF LOUISIANA HAS ALLOWED THE DEFINITION OF "OFFENDER" FOR THE PURPOSE OF THE EXHAUSTION OF THE ADMINISTRATIVE REMEDY TO BE EXPANDED ERRONEOUSLY TO INCLUDE MINOR OFFENDER'S MOTHER WHO FILED SUIT FOR DAMAGES HE SUSTAINED WHILE IN THE CUSTODY OF THE STATE OF LOUISIANA, REQUIRING THE MOTHER TO COMPLY WITH THE CORRECTIONS ADMINISTRATIVE RELIEF REMEDY.....5

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STATEMENT OF THE BASIS OF JURISDICTION OF THE SUPREME COURT

On September 3, 1999 the Supreme Court of the State of Louisiana denied appellant's timely-filed motion for reconsideration. Pursuant to the Supreme Court Rule 13.1, this petition has been filed within 90 days of the denial of the rehearing.

The statutory provision for this Court's jurisdiction is 28 U.S. C. э 1254.

STATUTES INVOLVED IN THIS CASE

La. R.S. 15:1171(B), which provide that the DPSC may adopt an administrative remedy procedure providing the exclusive remedy for adult and juvenile offenders against

the state and its employee for all complaints and grievances arising while the offender is in the custody of the state.

La. R.S.15:1172(B) provides that no state court shall entertain an offender's grievance or complaint which falls under the purview of the Corrections Administrative Remedy Procedure unless or until the offender exhaust the remedies provided therein.

La. R. S. 15: 1174 (2) defines and "Offender" as an adult or juvenile offender who is in the physical or legal custody of the Department of Public Safety and Corrections.

STATEMENT OF THE CASE

Christopher Bell was a minor without procedural capacity, therefore his mother, Sandy Edmonds took proper steps to be duly appointed as natural tutrix following her son being injured while in the physical custody of the State of Louisiana.

On October 14, 1996, while in the custody of the Department of Public Safety and Corrections Christopher Bell sustained a traumatizing injury resulting in four of his fingers being amputated by a wood planner saw. Christopher Bell's injuries required hospitalization for more

that a month Ms. Edmonds was not aware of an administrative procedure, nor was she informed by the State that the administrative remedy was the exclusive remedy and she was required to exhaust the juvenile offender's administrative remedy prior to filing a lawsuit on behalf of her minor son. Moreover, at no time did Christopher Bell inform his mother that he was aware of any such requirement.

The accident occurred when Christopher Bell ("Christopher") was assisting the building trade instructor, Howard Randall who was building window panels for the class room. Mr. Randall turned on the saw for Christopher to use to cut the lumber to build the window panels. Christopher maintains that he had never operated the saw nor had he been trained in any safety measures or proper operation of the saw. In addition, that the saw did not have any protective cover or shield to prevent his hand from being pulled into the saw.

On or about March 31, 1999, the Court of Appeal for the Second Circuit rendered judgment and held that the district court should not have dismissed the lawsuit with prejudice, but agreed that the action was that of the minor,

therefore the administrative remedy should have to be exhausted prior to filing the lawsuit. The appellant court gave the plaintiff 30 days from the date the judgment becomes final to institute a claim under the Correction's Administration Remedy Procedure.

The court of appeal agreed that this case came under the purview of the Corrections Administrative Remedy Procedure, therefore effectively expanding the meaning of "offender" to Include tutrix or any other representative of a minor "offender." The opinion is published and the cite is: *Edmonds v. The State of Louisiana*, et al, 732 So, 2d 645 (La. App. 2d Cir. 1999.

The highest Court of Louisiana has refused to hear this case.

REASON FOR GRANTING THE WRIT

THE HIGHEST COURT OF LOUISIANA HAS REFUSED TO HEAR THIS CASE, THUS, THE HOLDING THAT THE ADMINISTRATIVE REMEDY APPLIED TO A NON-OFFENDER REPRESENTATIVE OF AN OFFENDER IS AN ERRONEOUS INTERPRETATION, AND THIS DECISION WILL CAUSE MATERIAL INJUSTICE AND THEREFORE WRIT OF CERTIORARI OR REVIEW SHOULD BE GRANTED TO PREVENT VIOLATION OF EQUAL PROTECTION AND DUE OF JUVENILE OFFENDERS.

La. R. S. 15:1171(B), which provide that the DPSC may adopt an administrative remedy procedure providing the exclusive remedy for adult and juvenile offenders against the state and its employee for all complaints and grievances arising while the offender is in the custody of the state. Also, La. R.S.15:1172(B) provides that no state court shall entertain an offender's grievance or complaint which falls under the purview of the Corrections Administrative Remedy Procedure unless or until the offender exhaust the remedies provided therein. La. R.S. 15: 1174 (2) defines and "Offender" as an adult or juvenile offender who is in the physical or legal custody of the Department of Public Safety and Corrections.... Appellant argues that she was not an "Offender" pursuant to the statute, therefore since she filed the suit as the natural tutrix of her minor son, who was a

minor and was in the physical custody of the Department of Public Safety and Correction, the administrative remedy was not applicable.

On or about March 31, 1999, the Court of Appeal for the Second Circuit rendered judgment and held that the district court should not have dismissed the lawsuit with prejudice, and gave the plaintiff 30 days from the date the judgment becomes final to institute a claim under the Correction's Administration Remedy Procedure. The court of appeal agreed that this case came under the purview of the Corrections Administrative Remedy Procedure, therefore effectively expanding the meaning of "offender" to Include the tutor or tutrix or any other representative of a minor "offender."

The highest Court of Louisiana has refused to hear this case, thus, the printed opinion of the Second Circuit Court holding that the administrative remedy applied to a non-offender representative of an offender in the custody of the Department of Corrections, which holding is an erroneous interpretation, and this decision will cause material injustice and therefore writ of certiorari or review should be granted to prevent clearly erroneous

interpretation of the law to remain in effect. The law which unfairly subjects a parent or other representative to comply with an administrative procedure without notice. Clearly from the reading of the statute, administrative remedy is not always the exclusive remedy available to "offenders" and "inmates." La. R. S. 15:1171 (B) provides in pertinent part that: ..."Such administration procedures, when promulgated, shall provide the exclusive remedy available to the offender for complaints or grievances governed thereby insofar as federal law allows"..... In other words, the exclusive nature of the remedy is subject to constitutional safeguards, including equal protection and due process.

The State District Court and the Appellant Court has expanded the meaning of "Offender." Interpretation of the term "offender" is an issue of first impression with respect to whether the definition would apply to a representative of an offender in the physical custody of the Department of Public Safety and Corrections for the purpose of complying with the Administrative Remedy Procedure . While the State of Louisiana has put in place procedure for handling adult and minor complaints and grievances while in the physical or legal custody of the state

the procedure does not address the issue of the Administrative Remedy Procedure in relationship to individuals not "offenders" or "inmates" who represent the interest of the "offender" or "inmate." *Green v. State of Louisiana, et al,* 96 0781 (LA. 1 Cir. 5/9/97) 693 So. 2d 1317. *Bumgarden v. Wackenhut Corrections Corp.*, 93-1349, (La. App. 3 Cir. 9/21/94, 645 so. 2d 655, 658, writ denied, 95-0156 (La. 6/2/95), 654 So. 2d 1102.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted:

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Dated: February 1, 2000

APPENDIX

APPENDIX A

STATE OF LOUISIANA * PARISH OF OUACHITA *
FOURTH DISTRICT COURT

SANDY EDMONDS, APPEARING AS * FILED
TUTRIX OF HER MINOR SON, February 13, 1998
CHRISTOPHER BELL

VERSUS NO. 97-1414 *

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS ET AL *
BY:_____ DEPUTY CLERK OF COURT

RULING

This matter is before the Court on a motion to dismiss filed by defendants State of Louisiana through the Department of Corrections and Howard Randall. In this motion the defendants seek to have the plaintiff's suit dismissed for failure to comply with La. R. S. 15:1172.

The plaintiff contents that the basis of the defendant's motion is prematurity which must be raised in a dilatory exception. She argues that since prematurity was not raised prior to filing an answer, the exception is waived.

La. R. S. 15:1171 et seq., set out an administrative remedy procedure which must be followed by offenders in correctional institutions who wish to make claims against the State. R. S. 15:1172 specifically states that if the offender has failed timely to pursue administrative remedies through this procedure, any petition he files shall be dismissed. In addition, the thirty day time period set out in La. R. S. 15:1177 has been held to be preemptive because it sets out a time period in which the right to file suit must be exercised. Carter v. Lynn, 93-1583 (La. App. 1 Cir. 5/20/94); 637 So. 2d 690. As a result, the plaintiff's right to file suit would not come into existence until the Department of Corrections renders a decision that is adverse to him and dismissal is appropriate under La. R. S. 15:1172.

For these reasons, the motion to dismissed is granted.

APPENDIX B

SANDY EDMONDS, APPEARING AS TUTRIX OF HER MINOR SON, CHRISTOPHER BELL	:	NUMBER 97-1414
	:	4TH JUDICIAL DISTRICT COURT
VERSUS	:	
DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONS ET AL	:	OUACHITA PARISH, LOUISIANA

JUDGMENT

THIS CAUSE having come before the court for hearing on November 19, 1997, on a Motion to Dismiss filed by the defendants, THE STATE OF LOUISIANA THROUGH THE DEPARTMETN OF SAFETY AND CORRECTIONS and HOWARD RANDALL, and against SANDY EDMONDS, appearing as Tutrix of her minor son, CHRISTOPHER BELL, and the Court finding that the law and evidence supports the defendants:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the defendants' Motion to Dismiss is GRANTED and that there be judgment herein dismissing, with prejudice, plaintiff's claims against the defendants

THE STATE OF LOUISIANA THROUGH THE DEPARTMENT OF SAFETY AND CORRECTIONS and HOWARD RANDALL, at plaintiff's cost.

Judgment rendered in chambers on the 13th day of February, 1998.

Judgment read and signed, on this 7th day of April, 1998

_____

MARCUS R.CLARK
DISTRICT JUDGE

APPENDIX C
Judgment rendered March 31, 1999
Application for rehearing may be filed within the delay allowed by art. 2166, LA C. C.P.

No. 31,821-CA

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

* * * * *

SANDY EDMOND, APPEARING AS TUTRIX
Plaintiff-Appellant
OF HER MINOR SON, CHRISTOPHER BELL

versus

DEPARTMENT OF PUBLIC SAFETY, ET AL
Defendants-Appellees

* * * * *

Appealed from the
Fourth Judicial District Court for the
Parish of Quachita, Louisiana
Trial Court No. 97-1414

Honorable Marcus R. Clark, Judge

* * * * *

LINDA RITZIE
Counsel for Appellant

RICHARD P. IEYOUB
Counsel for Appellees

MARY A. BROWN
HEATHER L. HORTON
Assistant Attorneys General

* * * * *

Before WILLIAMS, STEWART and GASKINS, JJ.
Gaskins, Judge

The plaintiff, Sandy Edmond[1] , as natural tutrix for her minor son, Christopher Bell, appeals a trial court judgment dismissing a personal injury claim against the defendants, the Department of Public Safety & Corrections, through Louisiana Training Institute at Monroe, and Howard Randall. The trial court dismissed the suit because the plaintiff failed to comply with the Corrections

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[1] With the exception of the caption in this suit, the plaintiff is referred to by her attorney as "Sandy Edmonds." For purpose of this opinion, we will utilize the name of the tutrix as it appears in the caption of this case.

Administrative Remedy Procedure, provided in La. R. S. 15: 1171 et seq. For the following reasons, we affirm in part and amend in part the trial court judgment.

FACTS

On April 8, 1996, Christopher Bell was injured when four of his fingers were severed by a wood planer machine while Bell was in the custody of the Department of Safety and Corrections at Louisiana Training Institute (LTI) in Monroe, Louisiana. At the time of the accident, Bell was 14 years old. One year later, on April 8, 1997, Bell's mother, Sandy Edmond, in her capacity as natural tutrix of her minor son, Christopher Bell, filed suit against the Department of Public Safety and Corrections (DPSC). She also named Howard Randall as a defendant. Mr. Randall allegedly was Bell's shop instructor at LTI at the time the accident occurred. The defendants filed an answer to the lawsuit, and after the parties had exchanged interrogatories and requests for the production of documents, the defendant filed a motion to dismiss. The motion was based on the provisions of La. R. S. 15: 1171 (B), which provide that the DPSC may adopt an administrative remedy procedure providing the exclusive remedy for adult and juvenile

offenders against the state and its employees for all complaints and grievances arising while the offender is in the custody of the state. Also, La. R. S. 15:1172(B) provides that no state court shall entertain an offender's grievance or complaint which falls under the purview of the Corrections Administrative Remedy Procedure unless or until the offender exhausts the remedies provided therein.

A hearing on the motion to dismiss was held in the trial court on November 19, 1997. At the hearing, the plaintiff argued that the basis of the defendants' motion to dismiss was, in effect, an exception of prematurity, which was waived because it was filed after the defendants answered the plaintiff's petition. On February 13, 1998, the trial court issued written reasons for its decisions to grant the motion to dismiss in favor of the defendants. The trial court discounted the plaintiff's argument that the motion to dismiss was based upon an exception of prematurity. [2] The trial court noted that, under La. R. S. 15:1172, if an offender fails to pursue administrative remedies, any petition filed in the trial court shall be dismissed. The trial court found that the plaintiff's right to file suit would not come

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[2] This ruling is not raised as error appeal.

into existence until the Department of Corrections renders a decision adverse to him and therefore, dismissal , dismissal was appropriate and was granted in favor of the defendants. On April 8, 1998, the trial court filed a judgment in favor of the defendants, dismissing the plaintiff's claim with prejudice. The plaintiff appealed the trial court judgment.

DISMISSAL OF CLAIM

On appeal, Ms. Edmond argues that the trial court erred in dismissing her claim against the defendants, asserting that the Corrections Administrative Remedy Procedure is not applicable to her. She contends that La. R. S. 15: 1171 et seq. applies only to offenders as defined in that statutory scheme. Ms. Edmonds argues that she is the plaintiff in this case and she is not an offender as defined in the statue. Therefore, the Corrections Administrative Remedy Procedure is not applicable to her and does not preclude the prosecution of her claim against the state in the trial court. This argument is without merit.

The statutory provisions relevant to this case are set forth below in pertinent part:

La. R. S. 15:1171(B):

The department or sheriff may . . . adopt in accordance with the Administrative Procedure Act,

administrative remedy procedure remedy procedures for receiving, hearing, and disposing of any and all complaints the state, the governor, the departments or any officials or employees thereof, . . . which arises while an offender is within thecustody or under the supervisor of the department . . . Such complaints and grievances include but are not limited to any and all claims seeking monetary, injunctive, declaratory, or any other form of relied authorized by law and by way of illustration includes action pertaining to conditions of confinement, personal injuries, medical malpractice, time computations, even though urged as a writ of habeas corpus, or changes to rules, regulation, policies, or stature. Such administrative procedure, when promulgated, shall provide the exclusives remedy available to the offender for complaints or grievance governed theory insofar as federal law allows . . .

[Emphasis supplied.]

La. R. S. 15:1172(A):

Upon approval of the administrative remedy procedure . . and the implemented of the procedure within the department or by the sheriff, this procedure shall constitute the administrative remedies available to offenders for the purpose of preserving any cause of action they may claim to have against the State of Louisiana, the Department of Public Safety and Corrections, or its employees . . .

La. R. S. 15:1172(B)

No state court shall entertain an offender's grievance or complaint which falls under the purview of the

administrative remedy procedure unless and until the offender shall have exhausted the remedies as provided in said procedure. If the offender has failed timely to pursue administrative remedies through this procedure, any petition he files shall be dismissed. If at the time the petition is filed the administrative remedy process has not yet been completed, the court shall stay the proceedings for ninety days to allow for completion of the procedure and exhaustion of the remedies thereunder.

La. R. S. 15:1174(2):

"Offender" means an adult or juvenile offender who is in the physical or legal custody of the Department of Public Safety and Corrections, a contractor operating a private prison facility, or a sheriff when the basis for the complaint or grievances arises. Any custody, shall not affect status as an "offender" for the purposes of this Part. [Emphasis supplied.]

La. R. S. 15:1177(A):

Any offender who is aggrieved by an adverse decision by the Department of Public Safety and Correction . . . rendered pursuant to any administrative remedy procedures under this Part may, within 30 days after receipt of the decision, seek judicial review of the decision only in the Nineteenth Judicial District Court . . . in the manner hereinafter provided: [Emphasis supplied.]

(9) The court may reverse or modify the decision only if substantial rights of the appellant have been prejudicial because the

administrative findings, inferences, conclusions, or decisions are:

(a) In violation of constitutional or statutory prisons.
(b) In excess of the statutory authority of the agency.
(c) Made upon unlawful procedure.
(d) Affected by other error of law.
(e) Arbitrary or capricious or characterized by abuse discretion or clearly unwarranted exercises of discretion.
(f) Manifestly erroneous in view of the reliable probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by firsthand observation of demeanor on the witness stand and the reviewing court does shall be given to the agency's determination of credibility issues.

It is clear from the wording of La. R. S. 15:1171(B) that the statutory scheme is intended to apply to juvenile offenders. However, La. C. C. P. art 683 provides that an unemancipated minor does not have the procedural capacity to sue. Therefore, in compliance with La. C. C. P. art. 4502 and La. C. C. art 235, Ms. Edmond took proper steps to be duly appointed as natural tutrix for her son. She then filed

suit on her son's behalf. Ms. Edmond did not sue or assert any claims in her individual capacity. Therefor, she is merely the legal representative for her son. She is not the plaintiff in this suit in her individual capacity. The damages claimed in the petition are those of the minor, Christopher Bell, not those of his mother, Ms. Edmond. Damages for personal injuries to a minor belong to the child and not to the parent who brings suit. *Hanna v. Otis,* 92 So. 360 (La. 1922); *Bernard v. Gravois,* 8 So. 2d 318 La. App. 1st Cir. 1942); *Lane v. Mud Supply Company*, 111 So. 2d 173 (La App. Orleans 1959). Therefore, it is the status of the minor, the owner of the claim, that is determinative of this issue. Because the juvenile is an offender as defined by La. R. S. 15:1174(2)[3], the exclusive relief of the Corrections Administrative Remedy Procedure is applicable to this case and must be followed.

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[3] We note that La. R. S. 15: 1174(2) defining "offender" was amended by Act 575. The wording of the statute is now contrary to the ruling established in *Bumgarden v Wackenhul Corrections Corporation* 93-1349 (La. App. 3d Cir. 9/21/94), 645 So. 2d 655, writ denied 95-0156 (La. 6/2/95), 654 So. 2d 1102, cited in brief by plaintiff. Bumgarden held that the status of the plaintiff at the time the suit is filed and not at the time of the action arose is determative of whether the exclusive remedy of the Corrections Adminstrative Remedy Procedure must be followed.

Because administrative remedies were not exhausted prior to filing of this suit in the Fourth Judicial District Court, the trial court was required to dismiss the suit. The plaintiff must exhaust administrative remedies before seeking judicial review. Such review may be made only in the Nineteenth Judicial District.[4] La. R. S. 15: 1172(B): La. R. S. 15:1177; *Marler v. Petty*, 94-1851 (La. 4/10/95), 653 So. 2d 1167: *Bellard v. Louisiana Correctional & Industrial School*, 95-0157 (La. 10-0157 (La. 10/16/95), 661 So 2d 430; we affirm that portion of the trial court judgment dismissing the plaintiff's claim.

We amend that portion of the judgment dismissing the claim with prejudice. No reasons were given for dismissing the claim with prejudice. The trial court may have reasoned that, because the Corrections Administrative Remedy Procedure was not instituted within 30 days of the date of the incident giving rise to the claim, the plaintiff's cause of action was extinguished. We note that the administrative rules enacted in compliance with La. R. S. 15:1171 et seq., and promulgated in Louisiana Register Volume 17, No. 1 provide that the administrative remedy

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[4] If the offender is in the physical custody of the sheriff, however, judicial review would lie in the district court having jurisdiction in the parish in which the sheriff is located.

process must be commenced by writing a letter to the unit head setting for the basis of the claim and the relief sought. The letter is to be written to the unit head, within 30 days of the alleged event. However, the rule provides that this requirement may be waived where the circumstances warrant, such as where the offender is ill and unable to write. The rule provides that the screening officer will use his best, reasonable judgment in such matters.

In *Jackson v. Kaylo*, 96 2775 (La. App. 1st Cir. 2/20/98), 709 So. 2d 820, the issue was whether an inmate's failure to initiate the prison grievance procedure within 30 days of the date of the incident giving rise to the claim extinguished the cause of action against the state. Citing La. R. S. 15:1172, requiring an offender to timely pursue administrative remedies or have his petition dismissed, the appellate court stated that it was clear the legislature contemplated there would be some time limit on the right to pursue an administrative remedy. However, the legislature did not impose a time limit in the statute, and the court noted that it is axiomatic that there can be no prescription other than threat established by legislation. The 30 day time period allowed for initiation of the claim was part of the

administrative procedure, not part of the statute, The appellate court concluded that the 30 day limitation in the administrative rules did not extinguish the cause of action because the administrative officers were granted discretion to waive the time limit and accept untimely claims.

Therefore, the appellate court concluded that, although the trial court did not have jurisdiction to entertain the lawsuit at the time the offender filed suit, because of the offenders failure to exhaust the administrative remedy procedure, the trial court was not required to dismiss the suit as time-barred or extinguished by prescription. Instead, if the offender chose to initiate the administrative remedy, an administrative official would determine whether the offender's failure to file his complaint within 30 days of the incident giving rise to the claim was justifiable, under all the circumstances. The court affirmed dismissal without prejudice.

In accordance with the reasoning in *Jackson v. Kaylo, supra,* we find that the claim in the present case should be dismissed without prejudice. The plaintiff will then have the opportunity to comply with the prescribed administrative procedure and an administrative officer may

make a determination of whether the failure to timely comply with the Corrections Administrative Remedy Procedure was justifiable, under al the circumstances in this case. In the event of an adverse decision, the plaintiff may seek judicial review in the Nineteenth Judicial District Court.

CONCLUSION

For the reasons stated above, we hereby affirm the dismissal of the suit, but amend to delete the prejudicial effect assigned by the trial court, and make the judgment one of dismissal without prejudice. The plaintiff is given 30 days from the date this judgment becomes final to institute a claim under the Corrections Administrative Remedy Procedure and the rules promulgated pursuant thereto. Cost in this court and tin the court below are assess to the plaintiff.

AFFIRMED IN PART, AMENDED IN PART, AND AS AMENDED, AFFIRMED.

APPENDIX D

THE SUPREME COURT OF THE STATE OF LOUISIANA

SANDY EDMONDS, APPEARING AS
TUTRIX OF HER MINOR SON,
CHRISTOPHER BELL

VERSUS NO. 99-C-1264

DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS ET AL

IN RE: Edmonds, Sandy, Etal; - Plaintiff(s); Applying for Reconsideration of this Courts action dated June 18, 1999; Parish of Ouachita 4th Judicial District Court div. "E" Number 97-1414; to the Court of Appeal, Second Circuit, Number 31821-CA September 3, 1999

Reconsideration denied. Judgment is definitive.

CDK
PFC
HTL
BJJ
JPV
CDT
JTK

MARCUS, J., - not on panel
Supreme Court of Louisiana
September 3, 1999

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Clerk of Court
For the Court